



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 223

[Docket No. 231116-0271]

RTID 0648-XR131

### Endangered and Threatened Wildlife and Plants; Technical Correction for the Giant Manta Ray

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and  
Atmospheric Administration (NOAA), Commerce.

**ACTION:** Direct final rule.

**SUMMARY:** We, NMFS, announce the revised taxonomy of *Manta birostris* (giant manta ray) under the Endangered Species Act of 1973, as amended (ESA). We are revising the Enumeration of threatened marine and anadromous species for the giant manta ray to reflect the scientifically accepted taxonomy and nomenclature of this species. We revise the scientific name of the species to *Mobula birostris*. The changes to the taxonomic classification and nomenclature do not affect the species' listing status under the ESA or any protections and requirements arising from its listing.

**DATES:** This rule is effective [*INSERT date 60 days after date of publication in the FEDERAL REGISTER*] without further action, unless significant adverse comment is received by [*INSERT date 30 days after date of publication in the FEDERAL REGISTER*]. If significant adverse comments are received, the NMFS will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2023-0141, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-0141 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Maggie Miller, NMFS, Office of Protected Resources, (301) 427-8457.

**SUPPLEMENTARY INFORMATION:**

**Purpose of This Rule**

The purpose of our direct final rule is to notify the public that we are revising the Enumeration of threatened marine and anadromous species (50 CFR 223.102(e)) to reflect the scientifically accepted taxonomy and nomenclature of one fish species, the giant manta ray, listed under section 4 of the ESA (16 U.S.C. 1531 *et seq.*). The change reflects the most recently accepted scientific name in accordance with 50 CFR 223.102(b).

We are publishing this rule as a direct final rule because this is a noncontroversial action that reflects decisions already taken in the scientific community, such that prior notice and an opportunity to comment is unnecessary. This rule does not change the listing status of the species under the ESA and does not alter any protections afforded the

species or any other legal requirements arising from the species' listing under the ESA. This change should be undertaken in as timely a manner as possible. This rule will be effective, as published in this document on the effective date specified in **DATES**, unless we receive significant adverse comments on or before the comment due date specified in **DATES**. Significant adverse comments are comments that provide strong scientific justification as to why the taxonomic and nomenclature changes to the Enumeration of the listed entity should not be adopted or why the rule should be changed. Please include sufficient scientific information with your comments that will allow us to verify the basis for any significant adverse comments.

If we receive significant adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date, and we will engage in notice and comment rulemaking under the applicable requirements of the Administrative Procedure Act to promulgate these changes to 50 CFR 223.102(e).

### **Background**

Under 50 CFR 223.102(b), we use the most recently accepted scientific name of any species that we have determined to be threatened under the ESA. The ESA likewise requires that listing decisions be based solely on the best scientific and commercial data available (see 16 U.S.C. 1533(b)(1)(A)). Using the best available scientific information, our direct final rule documents a taxonomic change (scientific name) to the giant manta ray. This change is supported by a study published in a peer-reviewed journal as well as acceptance by scientists and a number of national and international renowned organizations. We revise the scientific name of the giant manta ray listed under section 4 of the ESA (16 U.S.C. 1531 *et seq.*) as follows: *Mobula birostris*. We make this change to the Enumeration of threatened marine and anadromous species (50 CFR 223.102(e)) to reflect the most recently accepted scientific name in accordance with 50 CFR 223.102(b).

### **Taxonomy Classification**

## *Mobula birostris*

The scientific name change to *Mobula birostris* (giant manta ray) from *Manta birostris* is supported by genetic and morphological evidence (White *et al.* 2018). White *et al.* (2018) used molecular data from giant manta ray muscle tissues in Indonesia and the Philippines to describe the relationship of this species to ten other mobulid rays. Results from the phylogenetic analysis identified giant manta rays, as well as reef manta rays (previously *Manta alfredi*), to be nested within the genus *Mobula*, forming a sister relationship with *Mobula mobular* (White *et al.* 2018). Prior to this comprehensive genetic analysis, both manta rays were considered to be under a separate genus, *Manta*, as they both had a distinct morphological character – a terminal mouth. The other mobulid rays, under the genus *Mobula*, all had subterminal mouths. However, the mitochondrial genome and nuclear exon data show the inclusion of *Manta* under the genus *Mobula*, suggesting the terminal mouth is a derived character within *Mobula* (White *et al.* 2018). Additionally, White *et al.* (2018) point out that another morphological character, the spiracle position relative to the plane of the disc, is dorsal for the manta rays but also for the sister species, *Mobula mobular*, whereas the remaining smaller *Mobula* species have it located ventrally. As such, this morphological distinction also supports the finding of the genetic analysis that *M. birostris* forms a clade with *M. mobular*. Based on this study, many scientists have accepted the taxonomic change for giant manta rays and used the updated taxonomy in recent research publications (*e.g.*, Cabral *et al.* 2023; Carpenter *et al.* 2023; Garzon *et al.* 2023; Rambahiniarison *et al.* 2023). Additionally, many national and international organizations have adopted the taxonomy, including the American Fisheries Society, Eshmeier's Catalog of Fishes, FishBase, the International Union for Conservation of Nature, the Food and Agriculture Organization of the United Nations, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

NMFS, therefore, recognizes the taxonomic change and is making technical revisions to 50 CFR 223.102(e) to reflect the most recently accepted scientific name based on the best available scientific information about the listed species. Once the changes to 50 CFR 224.102(3) take effect, the taxonomic change will be incorporated into all new NMFS publications pertaining to the species. This species will continue to be listed as threatened and is subject to the same protections as existed prior to these changes. No other aspect of the entry for this species in 50 CFR 223.102(e) will change as a result of this rule.

### **Required Determinations**

The Assistant Administrator for Fisheries finds that good cause exists to waive the requirement for prior notice and opportunity for public comment, pursuant to 5 U.S.C. 553(b)(B). Such procedures would be unnecessary as the taxonomic change made in this rule is technical and reflects decisions already taken in the scientific community. This rule does not change the listing status of the giant manta ray under the ESA, and therefore does not alter the legal protections afforded to the species or any other requirements arising from its listing under the ESA or add any new requirements.

This action is not subject to review under Executive Order (E.O.) 12866. Because a general notice of proposed rulemaking is not required, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are inapplicable.

This final rule does not contain policies with federalism implications under E.O. 13132. Policies that have federalism implications refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications;

therefore, the agency did not follow the additional consultation procedures outlined in E.O. 13132.

This rule does not contain any collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

E.O. 12898 requires that Federal actions address environmental justice in the decision-making process. In particular, the environmental effects of the actions should not have a disproportionate effect on minority and low-income communities. This rule is not expected to have a disproportionate effect on minority populations or low-income populations.

This final rule makes a taxonomic change relative to a previous listing determination under the ESA to reflect the most recently accepted scientific name based on the best available scientific information about the species' taxonomy and nomenclature. NMFS has concluded that the National Environmental Policy Act (NEPA) does not apply to ESA listing actions, and we conclude that NEPA does not apply to this correction to the identification of the listed species to reflect the best available scientific information (see NOAA Administrative Order 216-6A and the Companion Manual for NOAA Administrative Order 216-6A, regarding Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities).

### **References Cited**

A complete list of references is available on our website at:

*<https://www.fisheries.noaa.gov/action/final-rule-list-giant-manta-ray-threatened-under-endangered-species-act>*

### **List of Subjects in 50 CFR Part 223**

Endangered and threatened species.

Dated: November 16, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 223 as follows:

**PART 223—THREATENED MARINE AND ANADROMOUS SPECIES**

1. The authority citation for part 223 is revised to read as follows:

**Authority:** 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 et seq.; 16 U.S.C. 5503(d) for § 223.206(d)(9).

2. In § 223.102, amend the table in paragraph (e), under the heading “Fishes” by revising the entry for “Ray, giant manta” to read as follows:

**§ 223.102 Enumeration of threatened marine and anadromous species.**

\* \* \* \* \*

(e) \* \* \*

Species <sup>1</sup>			Citation(s) for listing determination(s)	Critical habitat	ESA rules			
Common name	Scientific name	Description of listed entity						
*****								
Fishes								
*****								
Ray, giant manta	<i>Mobula birostris</i>	Entire species	83 FR 2916, Jan. 22, 2018	NA	NA			
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